Before the
Administrative Hearing Commission
State of Missouri

WELLPOINT, INC. AND SUBSIDIARIES,	)	
	)	
Petitioner,	)	
	)	
vs.	)	No. 13-0096 RI
	)	
DIRECTOR OF REVENUE,	)	
	)	
Respondent.	)	

DECISION

WellPoint, Inc. and its subsidiaries ("WellPoint") are entitled to a refund of Missouri income taxes for 2008 of $3,275,408, and for 2009 of $2,014,090, plus statutory interest for each year.

Procedure

WellPoint filed a complaint on January 17, 2013, challenging the Director of Revenue's ("the Director's") final decision denying WellPoint's request for a refund of income tax. The Director filed an answer to the complaint on January 31, 2013.

WellPoint filed a motion for summary decision on September 24, 2013, along with a statement of uncontroverted facts and a memorandum in support. The Director filed a response to WellPoint's motion, statement of facts, and memorandum, as well as a cross-motion for summary decision, on October 11, 2013.

We granted WellPoint's motion to convene an oral argument on November 21, 2013. WellPoint was represented at the hearing by Lawrence H. Weltman and Mark Sowers of Lewis,

Rice & Fingersh, L.C. The Director was represented by senior counsel Jan Hemm Pritchard. The case became ready for decision when the transcript was filed on November 25, 2013.

Findings of Fact

1. At all relevant times, WellPoint was an Indiana corporation that was the common parent of an affiliated group of companies.

2. WellPoint's tax year began on January 1 and ended on December 31.

3. At all relevant times, Basil D. Pappas was a Staff Vice President of Tax for WellPoint.

4. Pappas received a Bachelor of Science degree in business administration from the University of Missouri-St. Louis in 1972, and a Master of Finance degree from St. Louis University in 1979.

5. Pappas was first licensed by Missouri as a certified public accountant in 1980, is a member in good standing of the American Institute of Certified Public Accountants ("AICPA"), and first became a member of AICPA in 1980.

6. Pappas' professional employment experience included employment with the Internal Revenue Service as a revenue agent (1973-79), PricewaterhouseCoopers' tax area (1979-87), Blue Cross Blue Shield of Missouri's tax department (1987-98), PricewaterhouseCooper's insurance tax department (1998-2005), and WellPoint (2005-present).

7. WellPoint's Missouri income tax returns for 2008 and 2009 were prepared by Pappas or a team of tax practitioners under Pappas' supervision, working from WellPoint's office in St. Louis.

8. The 2008 and 2009 Missouri income tax returns were filed as separate company returns.

9. WellPoint relied on Pappas' education, experience, and licensure regarding the preparation of the original 2008 and 2009 Missouri income tax returns.

10. Pappas did not advise WellPoint that it may have been advisable for WellPoint to file consolidated Missouri income tax returns for 2008 or 2009.

11. After WellPoint's original 2009 return was filed, WellPoint's tax personnel at its Indianapolis headquarters, along with its outside accountants, determined that WellPoint would have owed far less in Missouri income tax had it filed consolidated Missouri income tax returns for 2008 and 2009.

12. On October 17, 2011, WellPoint filed amended, consolidated Missouri income tax returns for 2008 and 2009, as well as an executed Form MO-22 for each year indicating its election to file consolidated tax returns, with the Director.

13. On October 17, 2011, WellPoint was not under examination by the Director.

14. On November 4, 2011, the Director issued notices of adjustment to WellPoint, disallowing the filing of WellPoint's amended, consolidated 2008 and 2009 income tax returns. The notices of adjustment gave the reason for the disallowance as: "The corporation failed to make a timely election to file a consolidated return by the due date of the return under regulation 12 CSR 10-2.045[1] and failed to meet the requirements of the good faith exception."[2]

15. On December 21, 2012, the Director issued a final decision disallowing the filing of WellPoint's amended, consolidated returns for 2008 and 2009.

[1] All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

[2] LaFollette affidavit ¶ 38.

Conclusions of Law

We have jurisdiction over WellPoint's appeal of the Director's decision.[3] Our duty in a tax case is not merely to review the Director's decision, but to determine the taxpayer's lawful tax liability for the period or transaction at issue by finding facts and applying existing law to those facts.[4] We may do whatever the law permits the Director to do.[5] WellPoint has the burden to prove that it is entitled to a refund.[6]

Laws imposing deadlines for filing returns generally, filing consolidated returns, and seeking refunds

Section 143.511 imposes the general deadline for filing income tax returns as follows:

> Income tax returns required by sections 143.011 to 143.996 shall be filed on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year except where the taxpayer is an exempt organization. Exempt organizations shall have the same due date as set by the Internal Revenue Code of 1986, as amended. A person required to make and file a return under sections 143.011 to 143.996 shall, without assessment, notice, or demand, pay any tax due thereon to the director of revenue on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The director of revenue shall prescribe by regulation the place for filing any return, declaration, statement, or other document required pursuant to this chapter and for the payment of any tax.

The deadline for seeking a refund of income taxes paid is set out in § 143.801.1:

> A claim for credit or refund of an overpayment of any tax imposed by sections 143.011 to 143.996 shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later; or if no return was filed by the taxpayer, within two years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or

[3] Section 621.050.1. Statutory references are to RSMo 2000 unless otherwise noted.
[4] ***J.C. Nichols Co. v. Director of Revenue***, 796 S.W.2d 16, 20-21 (Mo. banc 1990).
[5] ***State Bd. of Regis'n for the Healing Arts v. Finch***, 514 S.W.2d 608, 614 (Mo. App., W.D. 1974).
[6] Sections 136.300.1 and 621.050.2.

> refund, unless a claim for credit or refund is filed by the taxpayer within such period.

This three-year limitation period also constitutes the deadline for filing an amended return in which a refund is sought.[7] In this case, WellPoint only asserted that it filed its original 2008 return "on or before October 15, 2009," and its original 2009 return "on or before October 15, 2010."[8] WellPoint's failure to show precisely when it filed those original returns is not fatal to its appeal, however, because it filed its amended returns and refund requests on October 17, 2011, less than three years from the earliest date it could have filed the original return for 2008, i.e., January 1, 2009;[9] therefore, WellPoint's refund request was timely, at least in the absence of a superseding rule.

The Director, however, claims that his regulation 12 CSR 10-2.045(13) contains such a superseding rule. It provides in relevant part:

> For tax years with a due date for filing the common parent's Missouri return (including extensions of time to file) after December 28, 1998, if an affiliated group qualified to file a Missouri consolidated return wishes to elect to file a Missouri consolidated return, the election must be exercised by the filing of a Missouri consolidated return on or before the due date (including extensions of time) for the filing of the common parent's separate Missouri return.

If this regulation applies to WellPoint's case, then the deadline for filing a consolidated return would be "the due date (including extensions of time) for the filing of the common parent's separate Missouri return," i.e., October 15, 2009 for WellPoint's 2008 return, and October 15, 2010 for the filing of its 2009 return.[10] Put another way, the regulation precludes a taxpayer in

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[7] ***Hamacher v. Director of Revenue***, 779 S.W.2d 565 (Mo. banc 1989).

[8] Affidavit of Basil D. Pappas, Ex. B to WellPoint's statement of material facts in support of its motion for summary decision, ¶ 9.

[9] This is because WellPoint's tax years for 2008 and 2009 ran from January 1 to December 31 of each year. *See* the Director's Notices of Adjustment for those tax years, Ex. A to affidavit of Christopher H. LaFollette, which is Ex. A to WellPoint's statement of uncontroverted facts in support of its motion for summary decision.

[10] We assume that WellPoint availed itself of the extension of time for filing set out in § 143.551.2.

WellPoint's situation, where it timely but erroneously filed a separate return, from curing its error by filing an amended, consolidated return after the deadline for filing the original return.

Federal regulations governing filing of consolidated returns
and extending deadline for filing them

The federal counterpart to 12 CSR 10-2.045(13) is 26 C.F.R. § 1.1502-75(a)(1), which states in relevant part:

> If [an affiliated] group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Like 12 CSR 10-2.045(13), this regulation creates a general rule that a consolidated return must be filed no later than the due date for the filing of the common parent's return.

However, a federal taxpayer in WellPoint's position may, in certain circumstances, take advantage of a federal regulation that has no Missouri counterpart. That regulation, 26 C.F.R. § 301.9100-3, provides in relevant part:

> (a) **In general.** Requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100–2 must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.
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> (b) **Reasonable action and good faith**
>
> (1) **In general**. Except as provided in paragraphs (b)(3)(i) through (iii) of this section, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer--
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> * * *
>
> (v) Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

> (2) **Reasonable reliance on a qualified tax professional**. For purposes of this paragraph (b), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not--
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> * * *
>
> (ii) Aware of all relevant facts.
>
> (3) **Taxpayer deemed to have not acted reasonably or in good faith**. For purposes of this paragraph (b), a taxpayer is deemed to have not acted reasonably and in good faith if the taxpayer--
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> * * *
>
> (ii) Was informed in all material respects of the required election and related tax consequences, but chose not to file the election[.]

As applied in this case, an affiliated group of corporations that had previously filed a separate return could, if it fulfilled the requirements of this regulation, file an amended, consolidated return if it learned, after filing the separate return, that it should have filed a consolidated return.

Section 143.961.2's effect on Missouri tax regulations

Section 143.961.2 creates a limitation on the Director's rulemaking power, as follows:

> The rules and regulations prescribed by the director of revenue shall follow as nearly as practicable the rules and regulations of the Secretary of the Treasury of the United States or his delegate regarding income taxation.

Kidde America, Inc. v. Director of Revenue,[11] discussed below, noted that § 143.961.2 did not require the Director to follow federal regulations if doing so would change the substantive rules of Missouri law. Nor, the Court continued, did the statute appear to require the Director to integrate the federal regulations, "part and parcel," into Missouri law.[12] But the Court continued:

> But where, as here, the Director has promulgated a rule of procedure for which there are corresponding federal rules, then [§

[11] 198 S.W.3d 153, 155 (Mo. banc 2006), *citing* ***Armco Steel Corp. v. State Tax Comm'n***, 580 S.W.2d 242, 245 (Mo. banc 1979).

[12] *Id.*

> 143.961.2] comes into play. Thus, by adopting only the "deadline" part of the corresponding federal regulations, and by omitting the "good faith exception" part, the Director has not followed the federal regulations "as nearly as practicable."[13]

Kidde America, Inc. v. Director of Revenue and its parallels to this case

WellPoint argues that its situation parallels the situation faced by Kidde America, Inc. and its subsidiaries regarding its 2000 Missouri income taxes. That situation was resolved by the Supreme Court's opinion in ***Kidde America, Inc. v. Director of Revenue***.

Like WellPoint, Kidde America was the parent corporation of an affiliated group of corporations and, like WellPoint, elected to file its 2000 Missouri income tax return as a separate corporation. In doing so, Kidde America relied on a qualified tax professional, just as WellPoint did here. As with WellPoint, Kidde America subsequently learned that its choice to file a Missouri separate corporation income tax return resulted in its paying substantially more taxes to Missouri than it would have paid, had it filed a consolidated return.[14]

Like WellPoint, Kidde America filed an amended, consolidated income tax return, which included a claim for refund of overpaid taxes. As in WellPoint's case, the Director denied the claim for refund on the ground that the deadline for filing Kidde America's consolidated return was the due date of the original return. Thus, argues WellPoint, it is entitled to a favorable decision because the facts of ***Kidde America*** are essentially on all fours with its case.

The Director does not challenge the parallels WellPoint asserts, but instead attacks WellPoint's position with other arguments. We consider those arguments below under "The Director's arguments," but first we consider whether the ***Kidde America*** opinion governs this case.

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[13] 198 S.W.3d 153, 155.
[14] *Id.*

The holding of ***Kidde America*** and its application to this case

In ***Kidde America***, the Court first held that, "Under the federal good faith exception, Kidde certainly would qualify for relief from the federal regulatory deadline for making an election to file a consolidated return."[15] It would have qualified, the Court continued, because it reasonably relied on a qualified tax professional, who failed to make, or advised it to make, the election to file a consolidated return as its original return.[16] The Court also held that 26 C.F.R. 301-9100-3(b)(3)(ii), which deems a taxpayer not to have acted reasonably or in good faith if the taxpayer was informed in all material respects of the required election and related tax consequences, but nonetheless chose not to file the election, did not bar Kidde America from making the election.[17] As a result, because Kidde America would have been entitled to file an amended, consolidated return had there been a Missouri regulation comparable to 26 C.F.R. 301.9100-3, the regulation barring such a return, 12 CSR 10-2.045(13), was unenforceable.[18]

The first ground, that a taxpayer may obtain relief if it reasonably relied on a qualified tax professional who failed to make or advise the election, applies here, but the Director does not contend that Pappas was not a qualified tax professional, or that he did not fail to make the election or recommend it. The second ground, precluding relief if Kidde America had been informed in all material respects of the election and its tax consequences but chose not to make the election anyway, was not raised by either WellPoint or the Director.

But the overall application of ***Kidde America*** to WellPoint still applies: WellPoint is entitled to a refund of overpaid taxes if it could have qualified under 26 C.F.R. 301.9100-3 to file an amended, consolidated Missouri return because, just as in 2000, the Director had not made a regulation comparable to 26 C.F.R. 301.9100-3, as § 143.961.2 requires. As in ***Kidde America***,

[15] 198 S.W.3d at 154.
[16] *Id.*, *citing* 26 C.F.R. § 301.9100-3(b)(1)(v).
[17] *Id.*
[18] *Id.* at 155-56.

because the Director failed to promulgate such a regulation, the regulation the Director did promulgate, 12 CSR 10-2.045(13), is unenforceable. Therefore, unless one of the Director's arguments prevails, we must follow ***Kidde America*** and hold in WellPoint's favor.

The Director's arguments

WellPoint's claim of reasonable reliance on Pappas fails, because Pappas' ignorance of relevant facts is imputed to WellPoint

The Director points out, correctly, that the qualified tax professional in ***Kidde America*** was an outside accounting firm, PricewaterhouseCoopers, while WellPoint's qualified tax professional was a vice president of WellPoint. The ***Kidde America*** opinion states without elaboration (other than to note that PricewaterhouseCoopers was "an accounting firm of world-renowned stature"[19]) that PricewaterhouseCoopers was such a qualified tax professional, while WellPoint asserts Pappas' credentials and experience. WellPoint argues, and we agree, that Pappas is a "qualified tax professional" for purposes of 26 C.F.R. 301.9100-3, something the Director does not dispute.

The Director, however, argues that WellPoint is precluded from claiming it acted reasonably and in good faith because, as a corporate officer of WellPoint, Pappas's knowledge of relevant facts was imputed to WellPoint. And, because that knowledge was imputed to WellPoint, WellPoint knew or should have known that Pappas was not aware of all relevant facts.

The Director cites four cases in support. In the first case, ***Matter of Pubs, Inc. of Champaign***, the court held that a corporation was charged with the knowledge that its director and officer had (falsely) granted a security interest in the corporation's property to a bank.[20] In

[19] ***Kidde America***, 198 S.W.3d at 155.
[20] 618 F.2d 432, 438 (7th Cir. 1980).

the second case, ***Packard Mfg. Co. v. Indiana Lumbermens Mut. Ins. Co.***, a plant superintendent's knowledge that gasoline was being stored in the plant was imputed to the corporation that owned the plant, such that the corporation's claim on its property insurance policy was rightly denied by the insurer.[21] In the third case, ***Wandersee v. BP Products North America, Inc.***, a corporation's agent's knowledge that a claim against another party was false was imputed to the corporation so as to make the corporation liable for the tort of injurious falsehood.[22] And in the fourth case, ***Medicine Shoppe Intern., Inc. v. J-Pral Corp.***, a corporation's vice-president's knowledge that another party had rescinded an assignment and amendment of a license agreement was imputed to the corporation in the corporation's action to enforce the license agreement.[23]

However, these authorities do not apply to this case because they only illustrate the general rule of law that a corporation is deemed to know what its officer, employee, or agent *knows*. In this case, however, the Director turns the principle upside down, and claims that WellPoint is deemed *not to know* what its officer did not know. He cites no authority in support, and we are aware of none. Therefore, we reject the argument.

Kidde America *did not consider the procedural requirements of the federal regulation, and WellPoint did not fulfill them*

Second, the Director points out, correctly, that the ***Kidde America*** opinion does not discuss the effect of 26 C.F.R. § 301.9100-3(e). Furthermore, the Director also asserts that subsection (e) should be applied here. That subsection is titled, "Procedural requirements," and reads as follows:

> (e) **Procedural requirements**--(1) **In general**. Requests for relief under this section must provide evidence that satisfies the

[21] 203 S.W.2d 415, 420 (Mo. banc 1947).
[22] 263 S.W.3d 623, 628-29 (Mo. banc 2008).
[23] 662 S.W.2d 263, 270 (Mo. App., E.D. 1983).

requirements in paragraphs (b) and (c) of this section, and must provide additional information as required by this paragraph (e).

(2) **Affidavit and declaration from taxpayer**. The taxpayer, or the individual who acts on behalf of the taxpayer with respect to tax matters, must submit a detailed affidavit describing the events that led to the failure to make a valid regulatory election and to the discovery of the failure. When the taxpayer relied on a qualified tax professional for advice, the taxpayer's affidavit must describe the engagement and responsibilities of the professional as well as the extent to which the taxpayer relied on the professional. The affidavit must be accompanied by a dated declaration, signed by the taxpayer, which states: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete." The individual who signs for an entity must have personal knowledge of the facts and circumstances at issue.

(3) **Affidavits and declarations from other parties**. The taxpayer must submit detailed affidavits from the individuals having knowledge or information about the events that led to the failure to make a valid regulatory election and to the discovery of the failure. These individuals must include the taxpayer's return preparer, any individual (including an employee of the taxpayer) who made a substantial contribution to the preparation of the return, and any accountant or attorney, knowledgeable in tax matters, who advised the taxpayer with regard to the election. An affidavit must describe the engagement and responsibilities of the individual as well as the advice that the individual provided to the taxpayer. Each affidavit must include the name, current address, and taxpayer identification number of the individual, and be accompanied by a dated declaration, signed by the individual, which states: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete."

(4) **Other information**. The request for relief filed under this section must also contain the following information--

(i) The taxpayer must state whether the taxpayer's return(s) for the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made is being examined by a district

> director, or is being considered by an appeals office or a federal court. The taxpayer must notify the IRS office considering the request for relief if the IRS starts an examination of any such return while the taxpayer's request for relief is pending;
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> (ii) The taxpayer must state when the applicable return, form, or statement used to make the election was required to be filed and when it was actually filed;
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> (iii) The taxpayer must submit a copy of any documents that refer to the election;
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> (iv) When requested, the taxpayer must submit a copy of the taxpayer's return for any taxable year for which the taxpayer requests an extension of time to make the election and any return affected by the election; and
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> (v) When applicable, the taxpayer must submit a copy of the returns of other taxpayers affected by the election.
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> (5) **Filing instructions**. A request for relief under this section is a request for a letter ruling. Requests for relief should be submitted in accordance with the applicable procedures for requests for a letter ruling and must be accompanied by the applicable user fee.

Subsection (e), like the other cited portions of 26 C.F.R. 301-9100-3, was a part of the regulation at the time of the events associated with the ***Kidde America*** case, yet the Court did not raise it in its opinion. Similarly, in this case WellPoint did not show that it satisfied these procedural requirements. As a result, the Director argues, WellPoint is not entitled to relief under 26 C.F.R. 301.9100-3.

However, the Director overlooks what the Court really held in ***Kidde America***. It did not hold that the taxpayer was entitled to relief because the federal regulation applied; instead, it held that the taxpayer was entitled to relief because the state regulation setting the filing deadline was *unenforceable,* due to the Director's failure to promulgate a regulation comparable to 26 C.F.R. 301.9100-3. It would be absurd to deny relief to a taxpayer from *state* taxes for failure to comply with a *federal* procedural requirement, particularly when, as the Supreme Court pointed out, the

federal regulation was not integrated into Missouri law.[24] Therefore, we do not deny WellPoint's claim for relief for failure to comply with that federal procedural requirement.

Pappas was not aware of all relevant facts; therefore, WellPoint could not reasonably rely on him

The Director argues, based on statements made by Pappas in his affidavit,[25] that WellPoint failed to show that Pappas was aware of all relevant facts required to make an informed decision about whether to file consolidated or separate returns for 2008 and 2009. This failure, the Director alleges, means that WellPoint was not entitled to reasonably rely on Pappas' awareness of such relevant facts and thus is not entitled to relief.

However, the Director overlooks the fact that under 26 C.F.R. 301.9100-3(b)(2)(ii), the taxpayer, *not* the tax professional, must know or have reason to know if the tax professional was not aware of all relevant facts in order not to qualify for relief. Therefore, what Pappas knew or did not know is irrelevant to determining whether WellPoint could have gotten relief under 26 C.F.R. 301.9100-3 or a comparable Missouri regulation.

Furthermore, this point differs from our discussion of what could and could not be knowledge imputed to WellPoint because Pappas knew it, because here, the Director's error is not one of misapplying the concept of knowledge imputed to the employer from the employee, but misapplying the federal regulation.

*The **Kidde America** opinion is limited to Kidde America, Inc.*

The Director notes the Supreme Court's statement in ***Kidde America***:

> 12 CSR 10–2.045(13), the Missouri regulatory deadline for making an election to file a consolidated return, *as applied to Kidde*, is unenforceable.

[24] ***Kidde America***, 198 S.W.3d at 155.

[25] Affidavit of Basil D. Pappas, Ex. B to WellPoint's statement of material facts in support of its motion for summary decision, ¶¶ 10-11.

(Emphasis added.) The language "as applied to Kidde," argues the Director, constitutes the Court's statement that its holding in the case is limited to the taxpayer in that case. As the Director's counsel elaborated in oral argument:

> [I]f you're on all fours, you can use a case for precedential value, but tax cases are so fact- reliant that I think the court made a point of saying -- of specifically limiting the ***Kidde*** case to the taxpayer in ***Kidde***.[26]

We think the Director reads too much into the phrase, "as applied to Kidde." The Supreme Court has the power to state, not merely suggest, that an opinion is not meant to have precedential value, by citing Sup. Ct. Rule 84.16(b).[27] Because the ***Kidde America*** opinion contains no such language, we follow and apply the precedent it sets.

The parties' other arguments

This case turns on the IRS' interpretation of 26 C.F.R. § 301.9100-3

Both parties argued that their interpretation of 26 C.F.R. § 301.9100-3 required a decision in their favor, and both referred to letter rulings issued by the Internal Revenue Service which show, they say, that the IRS has interpreted 26 C.F.R. § 301.9100-3 in a way that supports their respective positions. WellPoint claimed, in both its written submissions and at oral argument, to have found over 500 IRS private letter rulings, addressing taxpayers' claims for relief based on a failure to file consolidated returns based on reasonable reliance by a qualified tax professional. However, WellPoint neither produced nor cited to any of these letter rulings. In response, the Director claimed to have found 77 such rulings, and brought them to oral argument in an attempt to submit them as evidence.[28]

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[26] Tr. 21.

[27] *See* ***Brown v. Carnahan***, 370 S.W.3d 637, 667 (Mo. banc 2012) ("The Court affirms the trial court's judgment on these issues without further discussion, as an opinion on this matter would not have precedential value. Rule 84.16(b).")

[28] Tr. 22-23. We refused to accept the documents into evidence, as the hearing was for the purpose of hearing oral argument only, and the letter rulings were not cited in the Director's written submissions.

As we state above, the Court in ***Kidde America*** held that 13 CSR 10-2.045(13) is unenforceable in this situation; it did not hold that 26 C.F.R. § 301.9100-3 was to be applied to the situation. Therefore, the contents of the IRS's private letter rulings are irrelevant.

WellPoint should prevail because it provided Pappas with full access to all relevant facts

In ***Kidde America***, the Court noted that Kidde America had given its tax professional "full access to the information needed to prepare the returns." As a consequence, WellPoint argues that one of the grounds on which it should prevail is that it, too, provided Pappas with all the relevant facts needed for him to decide whether or not to file a consolidated return. As we set out above, the Director responded that Pappas' affidavit showed that he was not aware of all relevant facts.

We think both parties read too much into the Court's "full access" statement. First, the Director argues that access to information does not equal knowing the information, which is true enough so far as it goes. Then, WellPoint cites Pappas' access to relevant facts as satisfying an element of 26 C.F.R. 301.9100-3. Instead of accepting either party's argument, we read the Court's "full access" statement as supporting a larger point—that one of the reasons Kidde America could reasonably rely on its tax professional was that it did provide full access to the information needed to prepare its returns. "Full access" is not a requirement of 26 C.F.R. 301.9100-3, and the Court did not create a new requirement of full access.

Summary

WellPoint is entitled to a refund of $3,275,408, plus statutory interest, for the 2008 tax year, and a refund of $2,014,090, plus statutory interest, for the 2009 tax year.

SO ORDERED on December 16, 2013.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner